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James Kenyon

7 UNITED STATES DISTRICT COURT

8 DISTRICT OF NEVADA

9 MONICA CONTRERAS,

Case No. 2:13-cv-00591-APG-PAL

10 Plaintiff,

11 vs.

**DEFENDANT JAMES KENYON'S
ANSWER TO COMPLAINT**

12 RONALD D. FOX; JAMES KENYON;
PARTICA DONINGER; CLARK COUNTY,
13 NEVADA; STATE OF NEVADA, ex rel. THE
EIGHTH JUDICIAL DISTRICT OUCRT,
14 DOES 1-10; and ROE entities 11-20 inclusive,

15 Defendants.

16 Defendant JAMES KENYON, ("Defendant"), by and through his counsel, Kaempfer
17 Crowell Renshaw Gronauer & Fiorentino, and for his Answer to Plaintiff's Complaint, admits,
18 denies and alleges as follows:

19 1. Answering Paragraph 1 of the Plaintiff's Complaint, Defendant alleges that the
20 allegations contained therein call for non-factual, legal conclusions and Defendant is therefore
21 not required to answer the same.

22 2. Answering Paragraph 2 of the Plaintiff's Complaint, Defendant is without
23 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
24 said paragraphs and therefore denies the same.

1 3. Answering Paragraph 3 of the Plaintiff's Complaint, Defendant alleges that the
2 allegations contained therein call for non-factual, legal conclusions and Defendant is therefore
3 not required to answer the same.

4 4. Answering Paragraphs 4, 5 and 6 of Plaintiff's Complaint, Defendants admits the
5 allegations contained therein.

6 5. Answering Paragraph 7 of the Plaintiff's Complaint, Defendant alleges that the
7 allegations contained therein call for non-factual, legal conclusions and Defendant is therefore
8 not required to answer the same.

9 6. Answering Paragraph 8 of the Plaintiff's Complaint, Defendant is without
10 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
11 said paragraphs and therefore denies the same.

12 7. Answering Paragraphs 9 and 10 of Plaintiff's Complaint, Defendant admits the
13 allegations contained therein.

14 8. Answering Paragraphs 11, 12, 13, 14, 15, 16, and 17 of the Plaintiff's Complaint,
15 Defendant is without knowledge or information sufficient to form a belief as to the truth of the
16 allegations contained in said paragraphs and therefore denies the same.

17 9. Answering Paragraph 18 of Plaintiff's Complaint, Defendant denies the
18 allegations contained therein.

19 10. Answering Paragraph 19 of Plaintiff's Complaint, Defendant affirmatively alleges
20 that he issued Plaintiff one (1) citation for resisting arrest and that Defendant Fox issued two (2)
21 citations. Defendant further affirmatively alleges that Plaintiff was detained. Defendant denies
22 the remainder of the allegations contained therein.

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1 11. Answering Paragraph 20 of Plaintiff's Complaint, Defendant affirmatively alleges
2 that other Officers arrived and that Plaintiff was released from custody. Defendant denies the
3 remainder of the allegations contained therein.

4 12. Answering Paragraph 21 of Plaintiff's Complaint, Defendant affirmatively alleges
5 that Child Protective Services was called. Defendant is without knowledge or information
6 sufficient to form a belief as to the truth of the remainder of the allegations contained therein and
7 therefore denies the same.

8 13. Answering Paragraph 22 of Plaintiff's Complaint, Defendant affirmatively alleges
9 that Child Protective Services arrived. Defendant is without knowledge or information sufficient
10 to form a belief as to the truth of the remainder of the allegations contained therein and therefore
11 denies the same.

12 14. Answering Paragraphs 23 and 24 of the Plaintiff's Complaint, Defendant is
13 without knowledge or information sufficient to form a belief as to the truth of the allegations
14 contained in said paragraphs and therefore denies the same.

15 15. Answering Paragraphs 25, 26, 27, 28 and 29 of Plaintiff's Complaint, Defendant
16 alleges that the allegations contained therein call for non-factual legal conclusions and Defendant
17 is therefore not required to answer the same.

18 16. Answering Paragraph 30 of the Plaintiff's Complaint, Defendant is without
19 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
20 said paragraphs and therefore denies the same.

21 17. Answering paragraph 31 of Plaintiff's Complaint, Defendant alleges that the
22 allegations contained therein call for non-factual legal conclusions and Defendant is therefore not
23 required to answer the same.

24 18. Answering Paragraph 32 of Plaintiff's Complaint, Defendant denies the

allegations contained therein.

FIRST CLAIM FOR RELIEF

(Against Defendants FOX, KENYON and DONINGER, pursuant to 42 USC 1983 for violation of 4th Amended rights.)

19. Answering Paragraph 33 of Plaintiffs' Complaint, Defendant repeats and realleges his answers to the foregoing paragraphs as if fully set forth herein.

20. Answering Paragraph 34 of Plaintiff's Complaint, Defendant denies the allegations contained therein.

21. Answering Paragraph 35 of Plaintiff's Complaint, Defendant alleges that the allegations contained therein call for non-factual legal conclusions and Defendant is therefore not required to answer the same.

22. Answering Paragraph 36 of Plaintiff's Complaint, Defendant denies the allegations contained therein.

23. Answering Paragraph 37 of the Plaintiff's Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraphs and therefore denies the same.

24. Answering Paragraphs 38, 39 and 40 of Plaintiff's Complaint, Defendant denies the allegations contained therein.

SECOND CLAIM FOR RELIEF

(Against FOX, KENYON and DONINGER pursuant to 42 USC 1983 for violation of 14th Amendment rights)

25. Answering Paragraph 41 of Plaintiff's Complaint, Defendant repeats and realleges his answers to the foregoing paragraphs as if fully set forth herein.

26. Answering Paragraphs 42, 43, 44, 45 and 46 of Plaintiff's Complaint, Defendant denies the allegations contained therein.

THIRD CLAIM FOR RELIEF

(Against FOX, KENYON and DONINGER pursuant to 42 USC 1983 for violation of 4th and 14th Amendment rights)

21. Answering Paragraph 47 of Plaintiff's Complaint, Defendant repeats and realleges their answers to the foregoing paragraphs as if fully set forth herein.

22. Answering Paragraphs 48, 49, 50, 51 and 52 of Plaintiff's Complaint, Defendant alleges that the allegations contained therein call for non-factual legal conclusions and Defendant is therefore not required to answer the same.

FOURTH CLAIM FOR RELIEF

(Against Defendants CLARK COUNTY, municipal liability pursuant to 42 USC 1983)

23. Answering Paragraph 53 of Plaintiffs' Complaint, Defendant repeats and realleges his answers to the foregoing paragraphs as if fully set forth herein.

24. Answering Paragraphs 54 and 55 of the Plaintiff's Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraphs and therefore denies the same.

25. Answering Paragraphs 56, 57, 58 and 59 of Plaintiff's Complaint, Defendant alleges that the allegations contained therein call for non-factual legal conclusions and Defendant is therefore not required to answer the same.

FIFTH CLAIM FOR RELIEF

(Battery against Defendant FOX)

26. Answering Paragraph 60 of Plaintiff's Complaint, Defendant repeats and realleges his answers to the foregoing paragraphs as if fully set forth herein.

27. Answering Paragraphs 61, 62 and 63 of the Plaintiff's Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraphs and therefore denies the same.

SIXTH CLAIM FOR RELIEF

(False Imprisonment against Defendants FOX and KENYON)

28. Answering Paragraph 64 of Plaintiff's Complaint, Defendant repeats and realleges his answers to the foregoing paragraphs as if fully set forth herein.

29. Answering Paragraphs 65, 66, 67 and 68 of Plaintiff's Complaint, Defendant denies the allegations contained therein.

SEVENTH CLAIM FOR RELIEF

(Defamation against Defendants FOX and KENYON)

30. Answering Paragraph 69 of Plaintiff's Complaint, Defendant repeats and realleges his answers to the foregoing paragraphs as if fully set forth herein.

31. Answering Paragraph 70 of the Plaintiff's Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraphs and therefore deny the same.

32. Answering Paragraph 71 of Plaintiff's Complaint, Defendant alleges that the allegations contained therein call for non-factual legal conclusions and Defendant is therefore not required to answer the same.

33. Answering Paragraphs 72, 73 and 74 of Plaintiff's Complaint, Defendant denies the allegations contained therein.

EIGHTH CLAIM FOR RELIEF

(False Light against Defendants FOX and KENYON)

34. Answering Paragraph 75 of Plaintiff's Complaint, Defendant repeats and realleges his answers to the foregoing paragraphs as if fully set forth herein.

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36. Answering Paragraphs 77, 78 and 79 of Plaintiff's Complaint, Defendant denies the allegations contained therein.

(Infliction of Emotion Distress against Defendants FOX and KENYON)

38. Answering Paragraph 81 of Plaintiff's Complaint, Defendant alleges that the allegations contained therein call for non-factual legal conclusions and Defendant is therefore not required to answer the same.

40. Answering Paragraph 84 of the Plaintiff's Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraphs and therefore denies the same.

(Negligent Supervision against Defendant DONINGER)

42. Answering Paragraphs 86, 87 and 88 of Plaintiff's Complaint, Defendant alleges that the allegations contained therein call for non-factual legal conclusions and Defendant is therefore not required to answer the same.

1 43. Answering Paragraph 89 of the Plaintiff's Complaint, Defendant is without
2 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
3 said paragraphs and therefore denies the same.

4 **ELEVENTH CLAIM FOR RELIEF**

5 **(Negligence against Defendant FOX)**

6 44. Answering Paragraph 90 of Plaintiff's Complaint, Defendant repeats and realleges
7 his answers to the foregoing paragraphs as if fully set forth herein.

8 45. Answering Paragraphs 91 and 92 of Plaintiff's Complaint, Defendant alleges that
9 the allegations contained therein call for non-factual legal conclusions and Defendant is therefore
10 not required to answer the same.

11 **TWELFTH CLAIM FOR RELIEF**

12 **(Negligent Training/Supervision/Retention against Defendants CLARK COUNTY and**
13 **STATE OF NEVADA)**

14 46. Answering Paragraph 93 of Plaintiff's Complaint, Defendant repeats and realleges
15 his answers to the foregoing paragraphs as if fully set forth herein.

16 47. Answering Paragraphs 94, 95, 96 and 97 of Plaintiff's Complaint, Defendant
17 alleges that the allegations contained therein call for non-factual legal conclusions and Defendant
18 is therefore not required to answer the same.

19 48. Answering Paragraphs 98 and 99 of the Plaintiff's Complaint, Defendant is
20 without knowledge or information sufficient to form a belief as to the truth of the allegations
21 contained in said paragraphs and therefore denies the same.

22 49. Answering Paragraphs 100 and 101 of Plaintiff's Complaint, Defendant alleges
23 that the allegations contained therein call for non-factual legal conclusions and Defendant is
24 therefore not required to answer the same.

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THIRTEENTH CLAIM FOR RELIEF

(Respondeat superior liability against Defendants CLARK COUNTY and STATE OF NEVADA)

50. Answering Paragraph 102 of Plaintiff's Complaint, Defendant repeats and realleges his answers to the foregoing paragraphs as if fully set forth herein.

51. Answering Paragraphs 103 and 104 of Plaintiff's Complaint, Defendant alleges that the allegations contained therein call for non-factual legal conclusions and Defendant is therefore not required to answer the same.

AFFIRMATIVE DEFENSES

Further, as affirmative defenses to each and all of Plaintiff's alleged "causes of action," Defendant alleges:

1. Plaintiff's Complaint on file herein fails to state a claim against Defendant upon which relief can be granted.

2. Defendant's actions were reasonable and justified under the circumstances and were privileged.

3. At all times mentioned in Plaintiff's Complaint, Defendant acted under the good faith belief that his actions were legally justifiable.

4. The arrest, detention, identification and imprisonment of Plaintiff, if any, was completely justified and privileged under the circumstances alleged and was perfected pursuant to probable cause or reasonable cause in believing the Plaintiff had committed a criminal act.

5. There can be no recovery for punitive damages against any government official acting in his or her official capacity, pursuant to 42 USC § 1983.

6. No award of punitive damages can be awarded against Defendant under the facts and circumstances alleged in Plaintiff's Complaint.

1 7. At the time and place alleged in Plaintiff's Complaint, and for a period of time
2 prior thereto, the Plaintiff did not exercise ordinary care, caution or prudence for the protection
3 of her own safety, and the injuries and damages complained of by Plaintiff in her Complaint, if
4 any, were directly and proximately caused or contributed to by the fault, failure to act,
5 carelessness and negligence of Plaintiff.

6 8. At all times mentioned in Plaintiff's Complaint, Defendant did not personally
7 participate in any of the Plaintiff's alleged violations of her constitutional rights.

8 9. To the extent Plaintiff's causes of actions against Defendant sound in negligence,
9 no recovery can be had predicated upon 42 USC § 1983.

10 10. Plaintiff's suit fails to state a claim for relief as she failed to allege a violation of a
11 right, privilege, or immunity secured by the United States Constitution or by the laws of the
12 United States.

13 11. Defendant did not enact or promulgate any policy, statute, ordinance or custom,
14 policy or procedure which denied or abridged any of the Plaintiff's constitutional rights.

15 12. Defendant is qualifiedly immune from the actions alleged against him in
16 Plaintiff's Complaint.

17 13. The Nevada Revised Statutes, Chapter 41, limits the damages that may be
18 collectable against a political subdivision of the State of Nevada.

19 14. Defendant is not subject to suit upon the facts and conclusions as stated in
20 Plaintiff's Complaint by reason of his immunity as a political subdivision of the State of Nevada
21 and more particularly by reason of the provisions of NRS 41.031, 41.032 and 41.033.

22 15. Plaintiff's Complaint concerns a discretionary function of Defendant for which
23 Defendant is immune.
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1 16. The Plaintiff's claims of a constitutional violation are unsupported in both fact and
2 law, as Plaintiff has not alleged sufficient basis from which a constitutional interest might arise
3 in conjunction with the alleged actions.

4 17. The acts by Defendant, as alleged by Plaintiff, were made pursuant to and
5 consistent with NRS 171.123.

6 18. Pursuant to FRCP 11, all possible affirmative defenses may not have been alleged
7 herein insofar as insufficient facts were available after reasonable inquiry upon the filing of
8 Plaintiff's Complaint, and therefore, Defendant reserves the right to amend his Answer to the
9 Amended Complaint to allege additional affirmative defenses if subsequent investigation so
10 warrants.

11 19. That any damage suffered by Plaintiff was a direct and proximate result of her
12 own misconduct and actions.

13 20. Plaintiff has failed to mitigate her damages.

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WHEREFORE, Defendant prays for judgment as follows:

1. That Plaintiff take nothing by virtue of her Complaint on file herein, and that the same be dismissed with prejudice;


2. For an award of reasonable attorneys' fees and costs of suit incurred in the defense of this action; and

3. For such other and further relief that this Court may deem just and proper in the premises.

DATED this 14th day of May, 2013.

KAEMPFER CROWELL RENSHAW
GRONAUER & FIORENTINO

BY:


LYSSA S. ANDERSON (Nevada Bar No. 5781)
8345 West Sunset Road, Suite 250
Las Vegas, Nevada 89113
Attorneys for Defendant James Kenyon

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on this date, I electronically filed the foregoing
DEFENDANT JAMES KENYON'S ANSWER TO COMPLAINT using the court's CM/ECF
system which will send notification to the following:

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Attorney for Defendant Clark County

DATED this 14th day of May, 2013.


an employee of Kaempfer Crowell